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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,293	08/09/2001	Robert Hornung	IND-109.1	3317
20028	7590	12/08/2003	EXAMINER	
LAW OFFICE OF BARRY R LIPSITZ 755 MAIN STREET MONROE, CT 06468			ROSSI, JESSICA	
			ART UNIT	PAPER NUMBER
			1733	10

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/925,293	HORNUNG ET AL.
Examiner	Art Unit	
Jessica L. Rossi	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10/14/03, Election.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-42 is/are pending in the application.
4a) Of the above claim(s) 15, 16, 18 and 24-39 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-14, 17, 19-23 and 40-42 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 09 August 2001 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). ____ .
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-6. 6) Other: ____ .

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species A (sub-subspecies Aix, sub-subspecies Aiiiz, sub-subspecies Aiiix, and sub-subspecies Aivy) in Paper No. 9 is acknowledged.

Information Disclosure Statement

2. Portions of the information disclosure statements filed 9/13/02 and 10/15/01 fail to comply with 37 CFR 1.98(a)(3) because they do not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of some of the patents listed that is not in the English language. They have been placed in the application file, but some of the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 8, 11, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Palmer (US 5653073; provided in IDS).

With respect to claim 1, Palmer is directed to a method for making an integrated multipane window sash (abstract). The reference teaches providing a sash frame 26 having a glazing pane installation opening accessible from a first side thereof and a glazing support surface 26B on a second side thereof (Figure 1; column 4, lines 13-15; column 3, lines 36 and

41-44). The reference teaches inserting a first glazing pane 48 into the opening and placing an outside surface perimeter of the pane adjacent to the support surface (Figure 1; abstract; column 3, lines 60-65). The reference teaches inserting a second glazing pane 50 into the opening and mounting an inside surface perimeter of the second pane adjacent (note Figures of present invention for what Applicant's intend by "adjacent") to an inside surface of the first pane (Figure 1). The reference teaches installing at least one glazing bead 30 (*note Applicant's broad definition of "glazing bead" on p. 4, lines 17-23 of the specification and similarities between glazing bead 108 in Figure 17 of present invention and glazing bead 30 in Figure 1 of Palmer*) along at least a portion of the opening after the panes have been inserted (Figure 1; column 4, lines 16-24).

Regarding claim 2, the reference teaches inserting at least one additional pane into the opening and mounting the pane adjacent to a previous pane prior to installing the glazing bead (Figure 7).

Regarding claim 8, the reference teaches adhesively mounting at least a portion of the outside perimeter of the first pane 48 to the support surface by means of adhesive 44, 45 (Figure 1; column 3, line 60 – column 4, line 5).

Regarding claim 11, the reference teaches providing a desiccant 52 between the panes (Figure 1; column 4, lines 8-12).

Regarding claim 17, the reference teaches applying an adhesive 45 to at least a portion of the outside surface of the first pane to adhesively mount it to the support surface; note present claim does not state that adhesive has to be applied to the pane before the pane is mounted to the support surface.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 8, 12, 17, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Guhl (US 6260251).

With respect to claim 1, *it is noted that a particular sequence of steps is not being claimed; for example, the present claim does not exclude mounting the second pane to the first pane before inserting the first and second panes into the opening simultaneously.*

Guhl '251 teaches making an integrated multipane window sash (abstract). The reference teaches providing a sash frame 22 (portion 36 of sash frame depicted in Figure 6) having a glazing pane installation opening accessible from a first side thereof and a glazing pane support surface 42 on a second side thereof (Figure 6; column 5, lines 4-20; column 6, lines 49-60). The reference teaches mounting an inside surface perimeter of a first pane adjacent to an inside surface perimeter of a second pane by means of a hollow, pre-formed spacer 47 to form a glazing panel 24 (Figure 6; column 6, lines 59-60); it being noted that the panes of the present invention also have a spacer therebetween as shown in the Figures. The reference teaches inserting the first and second panes of panel 24 into the opening and placing an outside surface perimeter of the first pane adjacent to the support surface (Figure 6; column 5, lines 10-13). The reference teaches installing at least one glazing bead 46/91 along at least a portion of the opening after the

panes have been inserted (Figures 6 and 9; column 5, lines 14-16; column 6, lines 49-57; column 7, lines 28-29).

Regarding claim 8, the reference teaches adhesively mounting the first pane to the support surface (column 5, lines 10-13).

Regarding claim 12, the skilled artisan would have appreciated that the glazing bead of Guhl '251 would exert pressure on the outside surface perimeter of the last glazing pane, thereby biasing the panes toward the support surface, especially since Guhl '251 teaches the bead can be a snap-in bead 91 having a lip portion (Figure 9) that presses against the last pane, just like the glazing bead 108 depicted in Figure 17 of the present invention.

Regarding claim 17, the reference teaches applying an adhesive to at least a portion of the outside surface of the first pane to adhesively mount it to the support surface (column 5, lines 10-13); note present claim does not state that adhesive has to be applied to the pane before the pane is mounted to the support surface.

Regarding claim 19, the reference teaches the second pane being mounted to the first pane with a space between them (Figure 6).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer and further in view of Guhl et al. (US 6055783; provided in IDS).

Regarding claim 9, Applicants are directed to paragraph 4 above for a complete discussion of Palmer. Palmer is silent as to the form of the adhesive seals 44, 45. Selection of a particular form would have been within purview of the skilled artisan at the time the invention was made depending on the particular materials of the adhesive being used; it being noted that Palmer teaches using adhesive (column 4, lines 1-5) similar to that taught by the present invention (p. 15, lines 5-10).

However, it is known in the art to attach a pane to the support surface of a sash frame using an extruded adhesive, as taught by Guhl '783 (column 5, lines 9-12 and 41-47), wherein the skilled artisan would have appreciated that it is well known in the art to refer to an extruded strip of adhesive as being a "bead" of adhesive. Therefore, it would have been obvious to the skilled artisan at the time the invention was made to apply the adhesive of Palmer in the form of an extruded bead because such is known in the art, as taught by Guhl '783, wherein this allows for the adhesive to be applied in a heated state.

Regarding claim 10, Palmer is silent as to the support surface having a lip that extends around the second side of the sash frame. It would have been obvious to the skilled artisan at the time the invention was made to provide the support surface of Palmer with a lip because such is known in the art, as taught by Guhl (Figure 4; column 5, lines 55-64), wherein the lip would prevent the adhesives 44, 45 from being squeezed out from between the pane and support surface so as not to leave a messy appearance (Guhl '783; column 5, lines 60-64).

Regarding claim 13, Palmer is silent as to providing setting blocks on the sash frame to facilitate positioning of at least one pane. It would have been obvious to the skilled artisan at the time the invention was made to provide setting blocks on the sash frame of Palmer such that the

blocks are located in the space between the panes and the sash frame depicted in Figure 1 because such is known in the art, as taught by Guhl '783 (Figure 4; column 6, lines 31-37), wherein these blocks would absorb differential expansion and contraction of the panes and sash (Guhl; column 6, lines 35-37) while also facilitating positioning of the panes.

9. Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer and further in view of Silverman (US 6301843).

Regarding claims 21 and 22, Applicants are directed to paragraph 4 above for a complete discussion of Palmer. Palmer is silent as to installing a spacing clip between the first and second panes. It is known in the art to install spacing/retaining clips to a *window frame* of an insulating glass unit so that muntin bars can be inserted into these clips, as taught by Silverman (column 1, lines 10-26). Therefore, it would have been obvious to the skilled artisan at the time the invention was made to install spacing/retaining clips between the panes of Palmer so that muntin bars can be placed therein because such is known in the art, as taught by Silverman, wherein the muntin bars impart a certain decorative appearance to the window (Silverman; column 1, lines 9-11).

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guhl '251 and further in view of Eisenberg (US 3667179).

Regarding claim 2, Applicants are directed to paragraph 6 above for a complete discussion of Guhl '251. The reference is silent as to inserting an additional pane into the opening and mounting it to a previous pane prior to glazing bead installation. Selection of the number of panes forming the glazing panel 24 of Guhl '251 would have been within purview of the skilled artisan at the time the invention was made. However, it would have been obvious to

the skilled artisan to use three panes because such is known in the art, as taught by Eisenberg (Figures 6 and 8), where increasing the number of panes improves the insulating properties of the window.

11. Claims 3-7, 14, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guhl '251 and further in view of Leopold (US 5313761).

Regarding claim 3, Applicants are directed to paragraph 6 above for a complete discussion of Guhl '251. Guhl '251 is silent as to the second pane being mounted to the first pane via an adhesive.

It is known in the art to mount first and second panes 14 of window glazing unit 10 to each other by means of an adhesive 18 having a pre-formed, hollow spacer 16 partially embedded therein, as taught by Leopold (Figure 2; column 4, lines 15-37).

One reading the Guhl '251 reference as a whole would have appreciated that the type of spacer is not critical to the invention and therefore would have been motivated to mount the second pane of Guhl '251 to the first pane via an adhesive having a pre-formed, hollow spacer partially embedded therein because such is known in the art, as taught by Leopold, wherein the adhesive defines an impervious outer wall 18a and first and second lateral walls 18b that improve the air-tightness of the glazing unit.

Regarding claims 4-5, Leopold teaches the adhesive applied to at least a portion of the inside surface perimeter of both the first and second panes (Figure 2).

Regarding claim 6, the skilled artisan would have appreciated that the outer wall 18b of the adhesive would be applied to a portion of the sash frame of Guhl '251.

Regarding claim 7, Leopold teaches extruding the adhesive 18 (column 4, lines 20-24), wherein the skilled artisan would have appreciated that it is well known in the art to refer to an extruded strip of adhesive as being a “bead” of adhesive.

Regarding claim 14, the present invention achieves floating of the first and second panes by attaching the first pane to the support surface by means of an adhesive and mounting the first and second panes to each other by means of an adhesive (Figure 17). Therefore, since Guhl '251 in view of Leopold teaches the first pane adhesively attached to the support surface and the first and second panes adhesively mounted to each other, the skilled artisan would have appreciated that the first pane of Guhl '251 would float on the support surface while the second pane of Guhl '251 would float on the first pane.

Regarding claims 21-22, Leopold teaches installing a spacing clip 134 between the panes 14 so that muntin bars 132 can be secured within the clip between the panes (Figure 9; column 8, lines 35-38 and 45-46 and 52-53). It would have been obvious to install a spacing clip and muntin bars within the clip between the panes of Guhl '251 because such is known in the art, as taught by Leopold, wherein such provides a decorative appearance to the window.

12. Claims 9-11, 13, and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Guhl '251 and further in view of Guhl '783.

Regarding claim 9, Applicants are directed to paragraph 6 above for a complete discussion of Guhl '251. Guhl '251 is silent as to the form of the adhesive. Selection of a particular form would have been within purview of the skilled artisan at the time the invention was made depending on the particular materials of the adhesive being used.

However, it is known in the art to attach a pane to a support surface of a sash frame using an extruded adhesive, as taught by Guhl '783 (column 5, lines 9-12 and 41-47), wherein the skilled artisan would have appreciated that it is well known in the art to refer to an extruded strip of adhesive as being a "bead" of adhesive.

Therefore, it would have been obvious to the skilled artisan at the time the invention was made to apply the adhesive of Guhl '251 in the form of an extruded bead because such is known in the art, as taught by Guhl '783, wherein this allows for the adhesive to be applied in a heated state.

Regarding claim 10, Guhl '251 is silent as to the support surface having a lip that extends around the second side of the sash frame. It would have been obvious to the skilled artisan at the time the invention was made to provide the support surface of Palmer with a lip because such is known in the art, as taught by Guhl '783 (Figure 4; column 5, lines 55-64), wherein the lip would prevent the adhesive from being squeezed out from between the pane and support surface so as not to leave a messy appearance (Guhl '783; column 5, lines 60-64).

Regarding claim 11, Guhl '251 is silent as to providing a desiccant between the panes. It would have been obvious to the skilled artisan at the time the invention was made to provide a desiccant between the panes of Guhl '251 because such is known in the art, as taught by Guhl '783 (column 6, lines 38-53), wherein such removes moisture from between the panes.

Regarding claim 13, Guhl '251 is silent as to providing setting blocks on the sash frame to facilitate positioning of at least one pane. It would have been obvious to the skilled artisan at the time the invention was made to provide setting blocks on the sash frame of Guhl '251 because such is known in the art, as taught by Guhl '783 (Figure 4; column 6, lines 31-37),

wherein these blocks would absorb differential expansion and contraction of the panes and sash (Guhl '783; column 6, lines 35-37) while also facilitating positioning of the panes.

Regarding claim 20, Guhl '251 is silent as to filling the space between the panes with an inert gas. It would have been obvious to the skilled artisan at the time the invention was made to fill the space between the panes of Guhl '251 with an inert gas and seal the space to prevent leaking because such is known in the art, as taught by Guhl '783, wherein such provides thermal insulation (Guhl '783; column 6, line 54 – column 7, line 10).

13. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guhl '251 and further in view of Tibble (US 3573149).

Regarding claim 23, Applicants are directed to paragraph 6 above for a complete discussion of Guhl '251. Guhl '251 is silent as to applying an adhesive between the glazing bead and an adjacent glazing pane. One reading Guhl '251 as a whole would have appreciated that the type of glazing bead, its material, and its method of attachment is not critical to the invention (Figures 6 and 9; column 6, lines 47-58; column 7, lines 26-30). Therefore, selection of a particular method for attaching the glazing bead would have been within purview of the skilled artisan at the time the invention was made. However, it would have been obvious to the skilled artisan to attach the glazing bead of Guhl '251 using adhesive because such is known in the art, as taught by Tibble (Figure 3; column 4, lines 65-70), wherein this eliminates the need for mechanical fasteners.

14. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guhl '251 and further in view of Rundo (US 4873803; provided in IDS).

Regarding claim 40, Applicants are directed to paragraph 6 above for a complete discussion of Guhl '251. Guhl '251 is silent as to the glazing bead comprising a flexible adhesive. One reading Guhl '251 as a whole would have appreciated that the type of glazing bead, its material, and its method of attachment is not critical to the invention (Figures 6 and 9; column 6, lines 47-58; column 7, lines 26-30).

It is known in the art to insert a glazing bead 5, which comprises an adhesive, along a portion of a glazing pane installation opening after the panes have been inserted, wherein the bead retains the pane on the ledge of the sash frame 4, as taught by Rundo (Figure 2; column 2, lines 25-30).

Therefore, it would have been obvious to the skilled artisan at the time the invention was made to use a glazing bead comprising an adhesive for that of Guhl '251 because such is known in the art, as taught by Rundo, wherein such a glazing bead would retain the pane on the ledge of the sash frame of Guhl '251 while also eliminating the need for mechanical fasteners.

15. Claims 1, 8-11, 13, 17, 23, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guhl et al. '783 in view of the collective teachings of Guhl '251 and Tibble et al.

With respect to claim 1, Guhl is directed to a method for making an integrated multipane window sash (abstract). The reference teaches providing a sash frame 19 having a glazing pane installation opening accessible from a first side thereof and a glazing support surface 38 on a second side thereof (Figure 4; opening on left side, support on right side; column 4, lines 6-9). The reference teaches inserting a first glazing pane 20 into the opening and placing an outside surface perimeter of the pane adjacent to the support surface (Figure 4; column 3, lines 30-31).

The reference teaches inserting a second glazing pane 21 into the opening and mounting an inside surface perimeter of the second pane adjacent (note Figures of present invention for what Applicant's intend by "adjacent") to an inside surface of the first pane (Figure 4). The reference teaches placing a decorative trim piece along a border portion of the outside surface of the second pane after the panes have been installed (column 7, lines 14-16), but is silent as to the trim piece being a glazing bead.

It is known in the art to place trim strips, in the form of a glazing bead, around the perimeter of the outside portion of the outermost pane in a multipane window sash, as taught by the collective teachings of Guhl '251 (column 5, lines 14-20) and Tibble (Figure 3, lines 65-70). Therefore, it would have been obvious to the skilled artisan at the time the invention was made to place a glazing bead, similar to that taught by Tibble, along at least a portion of the opening of Guhl '783 after installing the panes because such is known in the art, as taught by the collective teachings of Guhl '251 and Tibble, wherein the glazing bead would enhance the appearance of the window sash by hiding the adhesive sealants 46, 48, 50, and 52 (note again on p. 4, lines 16-23 of present specification that "glazing bead" can be a strip or frame).

Regarding claim 8, Guhl '783 teaches adhesively mounting at least a portion of the outside perimeter of the first pane 20 to the support surface by means of adhesive 46, 48 (Figure 4; column 56, lines 1 and 17).

Regarding claim 9, selection of a particular form for the adhesive would have been within purview of the skilled artisan at the time the invention was made depending on the particular materials of the adhesive being used. However, Guhl '783 does teach the adhesive can be extruded (column 5, lines 9-12 and 41-47), wherein the skilled artisan would have appreciated

that it is well known in the art to refer to an extruded strip of adhesive as being a “bead” of adhesive.

Regarding claim 10, Guhl ‘783 teaches the support surface having a lip 54 that extends around the second side of the sash frame (Figure 4; column 5, lines 55-57).

Regarding claim 11, Guhl ‘783 teaches providing a desiccant 60 between the panes (Figure 4; column 6, lines 44-50).

Regarding claim 13, Guhl ‘783 teaches proving setting blocks on the sash frame to facilitate positioning of the panes (Figure 4; column 6, lines 31-37).

Regarding claim 17, Guhl ‘783 teaches applying an adhesive 46, 48 to at least a portion of the outside surface of the first pane to adhesively mount it to the support surface (column 11, lines 15-18); note present claim does not state that adhesive has to be applied to the pane before the pane is mounted to the support surface.

Regarding claim 23, Tibble teaches applying an adhesive between the glazing bead 16 and an adjacent pane (Figure 3; column 4, lines 65-70). It would have been obvious to attach the glazing bead to the pane of Guhl ‘783 using adhesive because this eliminates the need for mechanical fasteners.

Regarding claim 41, Guhl ‘783 teaches providing an adhesive 46 between at least a portion of the outside perimeter of the first pane 20 and the support surface 38 and providing a first dam leg 39 between the support surface and an inside perimeter of the sash frame to isolate the adhesive from a space between the first and second panes (Figure 4; column 5, lines 5, line 65 – column 6, line 5). Please note similarities between Figure 4 of Guhl ‘783 and Figure 17 of the present invention having dam leg 113.

Regarding claim 42, Guhl '783 teaches providing a second dam leg 54 such that the adhesive 46 is constrained between the dam legs (Figure 4). Note similarities between Figure 4 of Guhl '783 and Figure 17 of the present invention having dam legs 111, 113.

Double Patenting

16. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17. Claims 1, 3-5, 7-9, 12, 17, 19, and 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 28 of copending Application No. 10/004,112 (refer to US 2003/0089054 for claims). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application encompass the limitations in claims of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jessica L. Rossi** whose telephone number is **703-305-5419** (571-

272-1223 come mid December). The examiner can normally be reached on M-F (8:00-5:30)
First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jessica L Rossi
Jessica L. Rossi
Patent Examiner
Art Unit 1733